

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TRUSTEES OF THE TILE, MARBLE &
TERRAZZO INSURANCE TRUST FUND, et al.,

Plaintiffs,

v.

Case No. 06-CV-14133-DT

CALIDAD, L.L.C., ZACHARY PYLE, individually
and d/b/a Calidad, L.L.C. and DAVID
BUCKSHAW, individually and d/b/a Calidad,
L.L.C.,

Defendants.

ORDER GRANTING “PLAINTIFFS’ MOTION FOR RECONSIDERATION”

Plaintiffs filed an *ex parte* motion for alternative service on November 9, 2006, asking the court to permit service of the summons and complaint upon Defendants by first class mail to their last known business address or by affixing a copy of the aforementioned documents to the front door of the same. In support of their November 9, 2006 motion, Plaintiffs attached an affidavit of the process server who asserted that she attempted to serve Defendants on Thursday October 5, 2006 at 2:15 p.m., Tuesday October 10, 2006 at 2:20 p.m., Thursday October 19, 2006 at 10:18 a.m. and Monday October 23, 2006 at 9:55 a.m.

Plaintiffs then filed a second *ex parte* motion for alternate service on December 8, 2006, and attached an affidavit indicating that the first attempt was made at 2:35 p.m. on Saturday, November 25, 2006, and the second attempt was made at 9:10 p.m. on Thursday, November 30, 2006. Because Plaintiffs did not style their December 8, 2006

motion as an amended motion, the court's order solely considered Plaintiff's second motion. Accordingly, the court found that Plaintiffs failed to make a sufficient showing that service of process cannot reasonably be made as provided by Federal Rule of Civil Procedure 4 because Plaintiffs did not yet attempt to serve Defendants during regular business hours, and denied the motion.

Plaintiffs now move the court to reconsider its December 20, 2006 order denying Plaintiffs' motion because the court did not consider Plaintiff's earlier attempts at service. These four earlier attempts were made during regular business hours, and constitute a sufficient showing that service of process cannot reasonably be made as provided by Rule 4. Because the court is convinced that its December 20, 2006 order suffered from a palpable defect, and its correction will result in a different disposition, the court will grant Plaintiffs' motion. Accordingly,

IT IS ORDERED that "Plaintiffs' Motion for Reconsideration" [Dkt. #7] is GRANTED. Plaintiffs are permitted to serve Defendants with the summons and complaint by first class mail to 38291 Schoolcraft Road, Suite 107, Livonia, Michigan 48150, and by firmly affixing the summons and complaint to the door of the same.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 28, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 28, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522